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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LEWIS P. GEYSER, ROBERT B. CORLETT, and T. LAWRENCE JETT,

Plaintiffs,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS, a division of the United States Department of the Interior; RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL S. BLACK, in his official capacity as Acting Assistant Secretary of Indian Affairs; AMY DUTSCHKE, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs,

Defendants.

Case No. 2:17-cv-07315

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56

Date: June 1, 2018
Time: 10:00 a.m.
Location: U.S. Courthouse
350 W. 1st St., 8th Floor
Courtroom 8C
Los Angeles, CA
Judge: Hon. Dolly M. Gee

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INTRODUCTION

This case involves a decision by the federal government to remove California's jurisdictional authority over 1,427 acres of its sovereign land. That decision transfers this land to federal trust, where an Indian tribe will regulate that land, together with the federal government, to the complete exclusion of state law. This exclusion extends to all matters of traditional state authority, including regulations striking at the heart of traditional state and local control. This decision suggests that this complete dislocation of all state power is permissible under the Indian Commerce Clause and the governing statutory scheme. According to the decision, there is no meaningful limit, constitutional or statutory, on the ability of the federal government to establish federal or Indian enclaves on sovereign land that has always been governed and controlled by the State.

That decision is wrong. There are indeed meaningful checks on the ability of the federal government to displace state power over state lands. The Enclave Clause sets out specific limits on the federal government's ability to withdraw land from state jurisdiction. A State's act of admission also precludes later attempts to retract territory already conferred on a State. The Indian Commerce Clause is subject to limits on Congress's ability to preempt all state law on every issue, even those affecting matters traditionally removed from federal control. And the federal statutory scheme, in the interest of federal-state comity, precludes the federal government from interfering with state law in such an intrusive manner without first satisfying a number of checks, some of which were not satisfied here.

These venerable principles are not new. The Founders both considered and rejected the notion that the federal government could simply buy private property at fee simple and exclude state regulation. At the Constitutional Convention, the delegates addressed the new government's power to acquire land under state control, and they worried that allowing Congress to exercise exclusive jurisdiction over that property would enable the government "to enslave any particular State by buying up its

territory."[1] To solve this problem, the Framers required the state legislature's consent before the government could exercise jurisdiction; that way, the States would retain their own authority over core aspects of state sovereignty, and they could refuse or condition consent in a manner protective of state interests. The federal government could still acquire property, but without state consent its ownership was merely one of "an ordinary proprietor." *Paul* v. *United States*, 371 U.S. 245, 264 (1963); see also, *e.g.*, *Fort Leavenworth R.R. Co.* v. *Lowe*, 114 U.S. 525, 526-527 (1885).

This system of checks—"requiring the concurrence of the States concerned"—"obviated" "[a]ll objections" to federal power to acquire and regulate state land. *The Federalist No. 43* (James Madison). But to be sure, this power was only "unobjectionable" because "it can only be exercised at the will of the state." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1219 (1833). The Enclave Clause therefore granted Congress the power "[t]o exercise exclusive Legislation" over land it acquires, but only with "the Consent of the Legislature of the State in which the Same shall be." U.S. Const., Art. I, § 8, Cl. 17. Recognizing this provision's importance, Congress codified its requirements and declared a *conclusive* presumption that the federal government lacks jurisdiction without state consent. See 40 U.S.C. 3112.

This case presents a textbook violation of these core limits on federal power. The federal government cannot oust state jurisdiction and control sovereign state land by simply acquiring it at fee simple. Its authority to regulate "Commerce" with "Indian Tribes" is not an end-run around these critical constitutional checks—and Congress's authority, though expansive, has never been understood as so capacious as to preempt *all* jurisdiction in every respect. Yet the agency's decision here did exactly that, declaring 1,427 acres of fee-simple land off-limits to traditional state or local control:

[1] 2 Max Farrand, *The Records of the Federal Convention of 1787*, at 510 (Yale University Press 1911), available at http://oll.libertyfund.org/titles/farrand-the-records-of-the-federal-convention-of-1787-vol-2.

indeed, in the plain words of the decision itself, this state property will "no longer be subject to State or local jurisdiction." AR258.88.[2]

The government has admitted that California's legislature has never consented to the United States' acquisition of this property, much less the total assertion of federal power. See Doc. 16, at 9 (¶ 48) (government's answer). Without that consent, the government had no authority to eject California from a significant portion of its own sovereign territory. The federal assertion of power was unlawful, and this Court should reject the federal government's attempt to divest the State and the county of its natural authority over state land. Plaintiffs should be granted summary judgment, and the agency's decision should be vacated.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Enclave Clause of the Constitution, Art. I, § 8, Cl. 17, provides in relevant part: "The Congress shall have Power * * * [t]o exercise exclusive Legislation * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

The Indian Commerce Clause of the Constitution, Art. I, § 8, Cl. 8, provides in relevant part: "The Congress shall have Power * * * [t]o regulate Commerce * * * with the Indian Tribes."

Section 3112(b) of Title 40, United States Code, provides as follows:

[2] In the decision below and other cases, the federal government has argued that the Enclave Clause does not apply because the government asserted only *partial* jurisdiction, not *complete* jurisdiction. See, *e.g.*, *Upstate Citizens for Equality, Inc.* v. *United States*, 841 F.3d 556, 571-572 (2d Cir. 2016). To that end, the government points out that it still permits state and local government to exercise limited *criminal* authority over the subject territories. AR258.94, AR258.3446. This actually proves *Plaintiffs'* point. The government cannot assert *exclusive* jurisdiction (as it did here) and then claim it is not "exclusive" because the federal government unilaterally decided to cede some power back to the States. The government only had that power to delegate *because it assumed total power in the first place*. The fact that the government may decide, as a policy matter, to share *its* (seized) power with local government does not make that power any less *the government's*. And the government cannot constitutionally arrogate that power to itself absent the State's consent.

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

STATEMENT OF FACTS

1. a. The land in question, known as "Camp 4," constitutes approximately 1,400 acres of real property in the Santa Ynez Valley in Santa Barbara County. Doc. 1, at 5 (¶ 15) (complaint); see also AR258.72-74. The Santa Ynez Valley encompasses several communities clustered together with a total population of 20,000 residents. Doc. 1, at 5 (¶ 15). The valley is serviced by the Santa Barbara County Sheriff's Department, the Santa Barbara County Fire Department, the California Highway Patrol, and other police departments, and operates several lower and intermediate schools, as well as one public high school. The valley has a single hospital. Only three highways lead into and out of the Santa Ynez Valley: Highway 101 (a 4-lane highway), Highway 154 (mostly a 2-lane mountain road from Santa Barbara City), and Highway 246 (mostly a two-lane road that joins Highways 154 and 101). Camp 4 is located at the intersection of Highway 154 and Highway 246. These highways are mainly used by traffic going north or south through the Santa Ynez Valley, which generates heavy traffic apart from traffic destined for the Santa Ynez Valley and its small local communities. Doc. 1, at 5-6 (¶¶ 15-16). All zoning and regulatory decisions regarding the development of the Santa Ynez Valley account for its small size and distinct geographic location.

Under California law, all counties are required to prepare General Plans for the use and development of lands under their legislative jurisdiction. See, *e.g.*, Cal. Gov't Code 65300, 65350. The Santa Ynez Valley is covered by its own specific plan (the Valley Plan).[3] The Valley Plan assigns to Camp 4 particular designations, uses, and limitations. As required by law, the Valley Plan factors in countywide and community considerations regarding traffic, policing, fire control, air quality, pollution, water, sewage, utilities, road, and school capacities, including core issues of public health, welfare, safety, and costs. See Cal. Gov't Code 65302. Additionally, the Valley Plan addresses architectural planning, aesthetic requirements, density rules, and development regulations (including restrictions on the amount, type, and height of development) that are specifically tailored to several different parts of the Santa Ynez Valley. These planning decisions are thus state-mandated community determinations for the benefit and welfare of the community, and they extensively affect every aspect of area life.

b. Plaintiffs Lewis P. Geyser, Robert B. Corlett, and T. Lawrence Jett own property near Camp 4 and have each resided in the Santa Ynez Valley for over a decade. Doc. 1, at 7-8 (¶ 18). They regularly use the valley's roads, highways, and facilities, and they rely on the valley's police, safety, fire, and hospital services. The county's zoning and building codes and restrictions play an important role in protecting essential aspects of the valley's health, welfare, economy, and community. *Id.* at 2-3, 7-8 (¶¶ 4, 18). All three Plaintiffs are adversely affected and face significant prejudice by unrestricted increases in traffic patterns, increases in population density, and increases in service and facility demands within the locality. *E.g.*, *id.* at 7-8 (¶ 18).

2. a. In 2010, the Santa Ynez Band of Chumash Mission Indians (the Tribe) purchased Camp 4 from Fess Parker Ranch, Inc., a private owner. AR80.5; AR80.88;

[3] Santa Ynez Valley Community Plan, County of Santa Barbara Planning & Development Department Office of Long Range Planning Board of Supervisors (Adopted October 6, 2009), available at https://tinyurl.com/syvalleyplan.

Doc. 16, at 5 (¶ 19). Before and after this fee-simple purchase, Camp 4 was like any other private property, subject to all pertinent state and local laws, including those regarding public health, safety, welfare, zoning, taxation, and the environment.

In 2013, however, the Tribe applied for the federal government to take Camp 4 into trust under the Indian Land Consolidation Act of 1983 (25 U.S.C. 2202) and the Indian Reorganization Act of 1934 (25 U.S.C. 5108). See AR80.1, AR258.3427. These statutes establish general authority for the Secretary of the Interior "to acquire land in trust for Indian tribes." AR258.3426.

b. A regional director of the Bureau of Indian Affairs granted the Tribe's application and accepted Camp 4 into federal trust. AR258.96. As relevant here, the director's decision eliminated all state and local control from Camp 4. The decision explicitly declared that Camp 4 will "no longer be subject to State or local jurisdiction." AR258.88. It asserted, specifically, that Camp 4 will not be "under the County's jurisdiction" (AR258.88), and explained that "placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property" (AR258.92). Tribal jurisdiction, the decision continued, "becomes predominant." *Ibid.* Indeed, the decision confirmed the need to remove the land from California's sovereign territory precisely to avoid state and local control: "If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals." AR258.92.[4]

c. Plaintiffs Geyser and Corlett (along with numerous other individuals and groups not parties here) administratively appealed the regional director's decision. See, *e.g.*, AR258.575. On appeal, the Principal Deputy Assistant Secretary-Indian Affairs,

[4] The decision also explained that, by virtue of *federal* law, the government elected to permit the State and local government to continue enforcing aspects of their local law (such as "criminal/prohibitory law") despite the federal government's total assumption of jurisdiction. AR258.94. There is nothing in the decision that would preclude the federal government from reconsidering this limited (re)grant of authority to the State and local government.

acting pursuant to 25 C.F.R. 2.4(c), entered a final decision affirming the regional director's decision to take Camp 4 into trust and oust state and local authority. AR258.3466. That final decision confirmed the expulsion of state and local authority over Camp 4. Specifically, it maintained that taking the private property into trust allows the Tribe to exercise "'sovereignty over the property'" and grants the Tribe "jurisdiction over its trust propert[y]." AR258.3440, AR258.3441. Likewise, the final decision confirmed that, by taking the land into trust and asserting federal control, Santa Barbara County no longer "'maintain[ed] jurisdiction over the Tribal property.'" AR258.3445.

In addition to addressing the merits of multiple arguments on appeal, the Principal Deputy Assistant also dismissed Geyser and Corlett's appeal "for failure to demonstrate their constitutional standing." AR258.3434.

In sum, under the agency's final action, the federal government transferred exclusive legislative jurisdiction over Camp 4 from California and reassigned that jurisdiction to the Tribe and itself.[5] The federal government thus preempted all state control (traditional and otherwise) from this local territory, despite having failed to obtain any consent for that jarring action from the state legislature.

ARGUMENT

Under the agency's decision, the federal government has the absolute right to obtain exclusive jurisdiction over huge swaths of state land simply by obtaining that land at fee simple and transferring it into an Indian trust. The agency is wrong. This wholesale elimination of all state and county authority is incompatible with controlling law. This is not a typical situation of a State interfering with tribal authority on an established tribal reservation. On the contrary, this is an attempt to purchase *private*

[5] Again, the federal government did voluntarily elect to grant limited residual authority to local enforcement in certain areas, see, *e.g.*, AR258.94, but the federal government first assumed absolute control before redelegating those powers on its own.

land—subject to the State's ordinary authority—and transfer that land outside state sovereignty to exclusive federal and tribal control.

The federal government cannot supplant state power without satisfying the constitutional and statutory requirements, including obtaining the state legislature's consent. The Enclave Clause prevents the federal government from asserting exclusive jurisdiction as a mere landowner. The State's admission to the Union secures its rights to the territory it obtained, and prevents subsequent extractions without its consent. And the Indian Commerce Clause cannot support complete preemption of virtually all state and local regulation, especially in sensitive areas subject to traditional state control. That Clause is simply not as strong as the federal government wishes, and it cannot justify an action tantamount to asserting exclusive jurisdiction, at least not without running headlong into other constitutional checks (including the Enclave Clause itself).

The government's attempt to replace California's power with its own—and to delegate that power to a "sovereign" Indian tribe—intrudes upon essential constitutional checks and violates federal law. The agency's decision is unlawful and it should be vacated.

I. THE FEDERAL GOVERNMENT EXCEEDED CONSTITUTIONAL LIMITS BY EXTINGUISHING STATE JURISDICTION OVER STATE TERRITORY WITHOUT STATE CONSENT

A. The Constitution's Enclave Clause Invalidates The Decision's Ouster Of State And Local Authority

1. The Constitution's Enclave Clause (Art. I., § 8, Cl. 17) bars the exercise of exclusive federal control over state lands without state consent. This Clause sets up a simple rule: while the federal government is always free to acquire state land, it does not acquire the exclusive rights to *regulate* that land absent state consent. Where the government acquires land without consent, "the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits"

(*Fort Leavenworth*, 114 U.S. at 539); it "'remain[s] part of [the State's] territory and within the operation of her laws'" (*James* v. *Dravo Contracting Co.*, 302 U.S. 134, 141-142 (1937)). The lack of consent, in short, leaves the federal government's "possession being simply that of an *ordinary proprietor*." *Paul*, 371 U.S. at 264 (emphasis added).[6] "The acquisition of title * * * is not sufficient to effect th[e] exclusion" of state power. *Id.* at 267 (quoting *Silas Mason Co.* v. *Tax Comm'n of Wash.*, 302 U.S. 186, 197 (1937)); see also, *e.g.*, *United States* v. *Cornell*, 25 F. Cas. 646, 648 (D.R.I. 1819) (Story, J.) ("But although the United States may well purchase and hold lands for public purposes, within the territorial limits of a state, this does not of itself oust the jurisdiction of sovereignty of such state over the lands so purchased.").[7]

The Enclave Clause's consent requirement was added to address the precise scenario presented by the agency's decision—the federal government acquiring land within a State, then attempting to exert full and absolute power to the exclusion of state

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[6] There is one exception distinguishing the federal government from ordinary landowners in fee simple: the State or local government cannot directly target any federal "instrumentalities" on the land in a way that frustrates the federal objectives. *Fort Leavenworth*, 114 U.S. at 539; see also *Dravo*, at 141-142. But the inability to directly target the federal government's "instrumentalities" is worlds apart from the government's right to engage in "exclusive Legislation" in the local area (U.S. Const., Art. I, § 8, Cl. 17).

[7] Multiple additional Supreme Court decisions confirm the necessity of consent along these same lines. See, *e.g.*, *Silas*, 302 U.S. at 197 ("The acquisition of title by the United States is not sufficient to effect that exclusion [of state authority]. It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise."); *Surplus Trading Co.* v. *Cook*, 281 U.S. 647, 650 (1930) ("It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal."); *Fort Leavenworth*, 114 U.S. at 531 ("The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals.").

and local authority. The Framers feared that allowing the federal government unfettered discretion over purchased land would enable the government "to enslave any particular State by buying up its territory." See p. 2 & n.1, *supra*. The Framers "obviated" "[a]ll objections and scruples" about this power "by requiring the concurrence of the States concerned." *The Federalist No. 43* (James Madison). As Justice Story explained, the power to legislate over purchased land "is wholly unobjectionable" *because* "it can only be exercised at the will of the state." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1219 (1833). As he concluded, "if there has been no cession by the state of the place, although it has been constantly occupied and used, under purchase, or otherwise, by the United States for a fort, arsenal, or other constitutional purpose, *the state jurisdiction still remains complete and perfect*." *Id.* at § 1222 (emphasis added).[8]

2. The government indisputably cannot meet the controlling constitutional standard. Here, the land was acquired by the Tribe in fee simple. The government admits that it never obtained California's consent. The agency's initial decision expressly declared that Camp 4 will "no longer be subject to State or local jurisdiction," AR258.88, and its final decision affirms that result. In both words and effect, the government has asserted total power over Camp 4, and has claimed the right to exercise exclusive federal authority.

Nor is it material that the final decision allows the State to maintain "criminal jurisdiction" over the land. AR258.3445. Any remaining local power (state or county) is permitted *by federal decision*. The federal government did not take only *some* powers; it took *all* powers and decided (in *its* exercise of authority) to cede some authority back. But any such permission to apply local laws is just that—*permission*

[8] *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976), is not to the contrary. In that case, the Supreme Court addressed a federal law that regulated use of property that was *already* "public lands." *Id.* at 531. Here, Plaintiffs' entire point—and the critical underpinning for the Enclave Clause's consent requirement—is that the government is asserting exclusive jurisdiction over land that was *not* already *federal land*, but instead was always under state and local control.

granted by the federal government as an exercise of federal power. The same federal power that affords the government the right to make that decision could also afford it the right to *reverse* that decision and retract all authority over the land. Exclusive jurisdiction is not any less *exclusive* because the government in its sole discretion allows a sliver of state power to remain.

This accordingly is not some mere technicality in phrasing: the fact that the federal government assumed wholesale control is sufficient to implicate the core concerns underpinning the Enclave Clause.

3. In sum, the Constitution anticipated situations where, as here, the federal government may perceive a need to acquire additional territory for its federal purposes, and it may look to the States to satisfy those needs. The Constitution accommodates these competing concerns in the Enclave Clause: if the federal government wishes to divest state authority to regulate the land, it has to obtain the State's consent. Without that consent, it cannot exercise exclusive control over state territory.[9]

Here, however, the federal government asserted plenary federal authority without obtaining the required consent. This assertion of jurisdiction is therefore invalid, and it should be undone.

B. The Federal Government Cannot Withdraw State Jurisdiction Over Real Property That Was Not Reserved To The Federal Government In The State's Admissions Act

Apart from violating the Enclave Clause, the government lacked authority to strip California of its sovereign territory for another reason: Congress failed to reserve Camp 4 from California's jurisdiction when it was admitted to the Union, and it cannot now withdraw that jurisdiction.

[9] Nor is consent some kind of formality. It serves as the States' ultimate safeguard against federal intrusion. And it also permits States to condition their consent on retaining certain aspects of their authority, thereby ensuring appropriate local control and a proper federal-state division of authority. See, *e.g.*, *Dravo*, 302 U.S. at 147-148.

As the Supreme Court explained, "'[t]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event * * * to suggest that subsequent events somehow can diminish what has already been bestowed.'" *Hawaii* v. *Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009). The Court accordingly "emphasized that 'Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State.'" *Ibid.* And as with submerged lands, the same "proposition applies a fortiori where virtually all of the State's public lands—not just its submerged ones—are at stake." *Ibid.*

The agency's decision, by delegating local property to a "sovereign" tribe, impermissibly "create[s] a retroactive 'cloud' on the title that Congress granted" to California when it was admitted. *Hawaii*, 556 U.S. at 176. While the federal government can of course purchase and hold land, it cannot unilaterally divest States of jurisdiction over their property without violating the Constitution. Cf. *Bond* v. *United States*, 564 U.S. 211, 225 (2011) ("Impermissible interference with state sovereignty is not within the enumerated powers of the National Government").

C. The Indian Commerce Clause Does Not Grant Congress The Power To Supersede State Sovereignty Over State Land, Much Less In Direct Contravention Of Other Constitutional Safeguards

The government may attempt to justify its actions under the Indian Commerce Clause, U.S. Const., Art. I, § 8, Cl. 3, but that argument fails for at least two reasons.

First, while the Indian Commerce Clause provides robust authority, not even that authority supports the complete preemption of virtually all state and local regulation, especially in core areas subject to traditional state control. Congress's power here is often described as "'plenary,'" but it "is not absolute." *Bugenig* v. *Hoopa Valley Tribe*, 266 F.3d 1201, 1219 (9th Cir. 2001). And it is unfathomable that Congress, under this Clause, was granted permission to completely rewrite all state and local laws concerning all topics, including sensitive areas traditionally deemed off-limits to federal control. The action here can affect zoning, crime, education, business,

the environment, family relations, housing, adoption, community service, health care, child support, traffic, and so on. And the government's claim is necessarily that Congress can invoke this staggering authority to oust state law whenever an Indian buys private property in fee simple.

There are aggressive assertions of federal authority, and then there are limitless assertions of federal authority. This case clearly falls in the latter bucket. Congress cannot preempt all state and local power, on core matters of state and local concern, without exceeding its enumerated powers. Cf., *e.g.*, *Upstate Citizens for Equality, Inc.* v. *United States*, No. 16-1320, 2017 WL 5660979, at *1-*3 (U.S. Nov. 27, 2017) (Thomas, J., dissenting from denial of certiorari).

Second, the Indian Commerce Clause does not permit Congress to exercise *exclusive* authority over state land (as it has attempted here) without satisfying the Enclave Clause. The Indian Commerce Clause permits Congress to regulate commerce otherwise within its legislative authority. It does not provide Congress the power to abrogate, after admission, the State's sovereign power over land within the State. That issue falls under the purview of the Enclave Clause, and the two constitutional provisions must be read together. The Supreme Court has reaffirmed that the Indian Commerce Clause does not permit Congress to do through the backdoor what the Constitution otherwise prohibits through the front. See, *e.g.*, *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44, 47 (1996) (even when Congress expresses a "clear intent to abrogate the States' sovereign immunity, the Indian Commerce Clause does not grant Congress that power"); cf., *e.g.*, *New York* v. *United States*, 505 U.S. 144 (1992) (noting structural checks on enumerated powers).

The Enclave Clause's specific requirements overcome Congress's general authority under the Indian Commerce Clause. The former provides the exclusive means for Congress to obtain exclusive jurisdiction over state lands, and the government failed to satisfy those means here.

In sum, Congress has no power (enumerated or otherwise) to purchase or take into trust state lands—with the aim of wholly displacing the State's sovereign authority—without complying with the Enclave Clause. The Indian Commerce Clause permits extensive regulation of Indian affairs, including preempting state law in appropriate areas. But it does not extend to the outer conceivable limits of all regulation, and it cannot permit Congress to regulate in a manner that the Enclave Clause forbids. Until California says otherwise, a Tribe cannot purchase ordinary private property and withdraw that land from the State's regulatory authority by asking the federal government to unilaterally transfer that land into federal trust.

II. ASIDE FROM VIOLATING THE CONSTITUTION, THE AGENCY'S DECISION—WHICH VESTS EXCLUSIVE JURISDICTION IN THE FEDERAL GOVERNMENT AND THE TRIBE WITHOUT STATE CONSENT—ALSO VIOLATES THE CONTROLLING STATUTORY SCHEME

Congress did not leave the Constitution as the sole backstop to prevent improper intrusions on States; it also captured the essential components of the Enclave Clause in the U.S. Code. Just like the Constitution, under governing statutory law, the federal government may not obtain exclusive or concurrent jurisdiction over state land without obtaining the State's consent:

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the

> Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

40 U.S.C. 3112(b) (re-codifying without substantive change 40 U.S.C. 255).

Satisfying Section 3112(b)'s consent requirement is not academic; it is a necessary prerequisite for the United States to establish jurisdiction over land that has been under state sovereignty. Indeed, Section 3112 *conclusively* presumes that the government *lacks* jurisdiction until state consent is given: "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section." 40 U.S.C. 3112(c). Discussing both the Enclave Clause and Section 3112's predecessor, the Supreme Court has explained that "without the State's consent' the United States does not obtain the benefits of" exclusive legislation, "its possession being simply that of an ordinary proprietor." *Paul*, 371 U.S. at 364 & n.30; see, *e.g.*, *Adams* v. *United States*, 319 U.S. 312, 313 (1943) ("Since the government had not [complied with the procedure] required by [Section 3112's predecessor], it clearly did not have either 'exclusive or partial' jurisdiction over the camp area.").

Again, the point of requiring consent is that the State may condition its consent on retaining certain aspects of its authority, thereby blunting the fear that the federal government may impose its absolute will through the simple act of a real-property purchase. See, *e.g.*, *Paul*, 371 U.S. at 264-265; *Dravo*, 302 U.S. at 138-139. Consent is therefore crucial not only to comply with Section 3112, but also to respect the traditional balance between state and federal authority. Indeed, the requirements of Section 3112 are consistent with a series of provisions designed to respect the separation of powers between the federal government and the States. See, *e.g.*, 4 U.S.C. 103 ("The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained."). Nor are these strong interests new: Since 1841,

Congress has limited the federal government's ability to assert exclusive jurisdiction over sovereign state land—a joint resolution of Congress prohibited the use of any public money for public buildings on land purchased by the United States until the "legislature of the State in which the land was situated had consented to the purchase." 5 Stat. 468 (Sept. 11, 1841).

Section 3112(b)'s plain terms were unsatisfied here. The government has admitted it never obtained California's consent (Doc. 16 (¶ 48)), and without it Section 3112(c) mandates that the government lacks jurisdiction over Camp 4.[10] The agency thus lacked the authority to exercise jurisdiction over the property and to remove it from state and local jurisdiction.[11]

III. THE AGENCY INCORRECTLY CONCLUDED THAT PLAINTIFFS LACK CONSTITUTIONAL STANDING

The final decision dismissed Geyser and Corlett's appeal for lack of constitutional standing. AR258.3434. That conclusion plainly flouts governing law. In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209 (2012), also challenging a fee-to-trust decision, the plaintiff "contended that he lived 'in close proximity to' the [property] and that a casino there would 'destroy the lifestyle he has enjoyed' by causing 'increased traffic,' 'increased crime,' 'decreased property values,' 'an irreversible change in the rural character of the area,' and 'other aesthetic, socioeconomic, and environmental problems.'" 567 U.S. at 213. The Court held that the "economic, environmental, and aesthetic harm [suffered] as a nearby property

[10] Nor was jurisdiction over Camp 4 reserved when California was admitted to the Union. "Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words." *Draper* v. *United States*, 164 U.S. 240, 243 (1896). There is no such express statement for California.

[11] To be clear, Plaintiffs do not deny the government's ability to take the land into trust, at least for *some* purposes; what the government cannot do, without the consent of California's legislature, is oust state and local jurisdiction. This does not foreclose the Tribe's ability to engage in meaningful activities on its land; it simply ensures the Tribe work with local authorities to harmonize Camp 4's usage with the larger community of which the Tribe is a valued member.

owner" established standing. *Id.* at 224-228. And the court of appeals decision that the Supreme Court affirmed found "no doubt" that Article III standing was satisfied: "[T]he impact of the Band's facility on [the plaintiff's] way of life constituted an injury-in-fact fairly traceable to the Secretary's fee-to-trust decision, an injury the court could redress with an injunction that would in effect prevent the Band from conducting gaming on the property." *Patchak* v. *Salazar*, 632 F.3d 702, 704 (D.C. Cir. 2011).

Plaintiffs' alleged harms are materially identical to the harms alleged in *Patchak*. As nearby property owners, Plaintiffs will suffer economic, environmental, aesthetic, safety, and security harms from Camp 4's development, if it occurs without honoring the Valley Plan's requirements and permitting local legislative oversight. All three Plaintiffs are required to use Highways 154, 246, and 101 on nearly a daily basis; and all three are adversely affected by unrestricted increased traffic patterns, increases in population density, and increased facility demands (among others) within the Santa Ynez Valley.

In any event, to be sure, Plaintiffs' standing in the *administrative* process is not necessary for them to bring these free-standing claims to challenge the Assistant Secretary's statutory and constitutional authority to take Camp 4 into trust and eliminate state and local jurisdiction. But the agency did err in this respect, and Plaintiffs challenge that error out of an abundance of caution.

Finally, after *Bond* v. *United States*, 564 U.S. 211 (2011), it is beyond cavil that Plaintiffs have standing to enforce the federalism principles embodied by Section 3112, the Enclave Clause, and the Constitution. The Supreme Court unanimously held that an individual "can assert injury from governmental action taken in excess of the authority that federalism defines. Her rights in this regard do not belong to a State." 564 U.S. at 220. This follows because "[a]n individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable." *Id.* at 222. Plaintiffs invoke just such an interest. And, indeed, other

courts have already recognized standing under directly analogous circumstances. See, *e.g.*, *Upstate Citizens*, 841 F.3d at 569 n.15.

CONCLUSION

Plaintiffs' motion for summary judgment should be granted.

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